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ENGROSSED HOUSE BILL 2362

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State of Washington                      64th Legislature                      2016 Regular Session

By Representatives Hansen, Pettigrew, Nealey, and Kirby

Read first time 01/11/16. Referred to Committee on Judiciary.

1            AN ACT Relating to video and/or sound recordings made by law  
2 enforcement or corrections officers; amending RCW 42.56.120;  
3 reenacting and amending RCW 42.56.240 and 42.56.080; adding a new  
4 chapter to Title 10 RCW; creating new sections; and providing  
5 expiration dates.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.** The legislature finds that technological  
8 developments present opportunities for additional truth-finding,  
9 transparency, and accountability in interactions between law  
10 enforcement or corrections officers and the public. The legislature  
11 intends to promote transparency and accountability by permitting  
12 access to video and/or sound recordings of interactions with law  
13 enforcement or corrections officers, while preserving the public's  
14 reasonable expectation that the recordings of these interactions will  
15 not be publicly disclosed to enable voyeurism or exploitation.

16            **Sec. 2.** RCW 42.56.240 and 2015 c 224 s 3 and 2015 c 91 s 1 are  
17 each reenacted and amended to read as follows:

18            The following investigative, law enforcement, and crime victim  
19 information is exempt from public inspection and copying under this  
20 chapter:

1 (1) Specific intelligence information and specific investigative  
2 records compiled by investigative, law enforcement, and penology  
3 agencies, and state agencies vested with the responsibility to  
4 discipline members of any profession, the nondisclosure of which is  
5 essential to effective law enforcement or for the protection of any  
6 person's right to privacy;

7 (2) Information revealing the identity of persons who are  
8 witnesses to or victims of crime or who file complaints with  
9 investigative, law enforcement, or penology agencies, other than the  
10 commission, if disclosure would endanger any person's life, physical  
11 safety, or property. If at the time a complaint is filed the  
12 complainant, victim, or witness indicates a desire for disclosure or  
13 nondisclosure, such desire shall govern. However, all complaints  
14 filed with the commission about any elected official or candidate for  
15 public office must be made in writing and signed by the complainant  
16 under oath;

17 (3) Any records of investigative reports prepared by any state,  
18 county, municipal, or other law enforcement agency pertaining to sex  
19 offenses contained in chapter 9A.44 RCW or sexually violent offenses  
20 as defined in RCW 71.09.020, which have been transferred to the  
21 Washington association of sheriffs and police chiefs for permanent  
22 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

23 (4) License applications under RCW 9.41.070; copies of license  
24 applications or information on the applications may be released to  
25 law enforcement or corrections agencies;

26 (5) Information revealing the identity of child victims of sexual  
27 assault who are under age eighteen. Identifying information means the  
28 child victim's name, address, location, photograph, and in cases in  
29 which the child victim is a relative or stepchild of the alleged  
30 perpetrator, identification of the relationship between the child and  
31 the alleged perpetrator;

32 (6) Information contained in a local or regionally maintained  
33 gang database as well as the statewide gang database referenced in  
34 RCW 43.43.762;

35 (7) Data from the electronic sales tracking system established in  
36 RCW 69.43.165;

37 (8) Information submitted to the statewide unified sex offender  
38 notification and registration program under RCW 36.28A.040(6) by a  
39 person for the purpose of receiving notification regarding a

1 registered sex offender, including the person's name, residential  
2 address, and email address;

3 (9) Personally identifying information collected by law  
4 enforcement agencies pursuant to local security alarm system programs  
5 and vacation crime watch programs. Nothing in this subsection shall  
6 be interpreted so as to prohibit the legal owner of a residence or  
7 business from accessing information regarding his or her residence or  
8 business;

9 (10) The felony firearm offense conviction database of felony  
10 firearm offenders established in RCW 43.43.822;

11 (11) The identity of a state employee or officer who has in good  
12 faith filed a complaint with an ethics board, as provided in RCW  
13 42.52.410, or who has in good faith reported improper governmental  
14 action, as defined in RCW 42.40.020, to the auditor or other public  
15 official, as defined in RCW 42.40.020;

16 (12) The following security threat group information collected  
17 and maintained by the department of corrections pursuant to RCW  
18 72.09.745: (a) Information that could lead to the identification of a  
19 person's security threat group status, affiliation, or activities;  
20 (b) information that reveals specific security threats associated  
21 with the operation and activities of security threat groups; and (c)  
22 information that identifies the number of security threat group  
23 members, affiliates, or associates; (~~and~~)

24 (13) The global positioning system data that would indicate the  
25 location of the residence of an employee or worker of a criminal  
26 justice agency as defined in RCW 10.97.030; and

27 (14) Body worn camera recordings to the extent nondisclosure is  
28 essential for the protection of any person's right to privacy as  
29 described in RCW 42.56.050, including, but not limited to, the  
30 circumstances enumerated in (a) of this subsection. A law enforcement  
31 or corrections agency shall not disclose a body worn camera recording  
32 to the extent the recording is exempt under this subsection.

33 (a) Disclosure of a body worn camera recording is presumed to be  
34 highly offensive to a reasonable person under RCW 42.56.050 to the  
35 extent it depicts:

36 (i) The interior of a place of residence where a person has a  
37 reasonable expectation of privacy;

38 (ii) An intimate image as defined in RCW 9A.86.010;

39 (iii) A minor;

40 (iv) The body of a deceased person;

1 (v) The identity of or communications from a victim or witness of  
2 an incident involving domestic violence as defined in RCW 10.99.020  
3 or sexual assault as defined in RCW 70.125.030, or disclosure of  
4 intimate images as defined in RCW 9A.86.010. If at the time of  
5 recording the victim or witness indicates a desire for disclosure or  
6 nondisclosure of the recorded identity or communications, such desire  
7 shall govern;

8 (vi) The identifiable location information of a community-based  
9 domestic violence program as defined in RCW 70.123.020, or emergency  
10 shelter as defined in RCW 70.123.020; or

11 (vii) The waiting or treatment area of a medical facility, or  
12 counseling or therapeutic program office.

13 (b) The presumptions set out in (a) of this subsection may be  
14 rebutted by specific evidence in individual cases.

15 (c) In a court action seeking the right to inspect or copy a body  
16 worn camera recording, a person who prevails against a law  
17 enforcement or corrections agency that withholds or discloses all or  
18 part of a body worn camera recording pursuant to (a) of this  
19 subsection is not entitled to fees, costs, or awards pursuant to RCW  
20 42.56.550 unless it is shown that the law enforcement or corrections  
21 agency acted in bad faith or with gross negligence.

22 (d) A request for body worn camera recordings must:

23 (i) Specifically identify a name of a person or persons involved  
24 in the incident;

25 (ii) Provide the incident or case number;

26 (iii) Provide the date, time, and location of the incident or  
27 incidents; or

28 (iv) Identify a law enforcement or corrections officer involved  
29 in the incident or incidents.

30 (e)(i) A person directly involved in an incident recorded by the  
31 requested body worn camera recording, an attorney representing a  
32 person directly involved in an incident recorded by the requested  
33 body worn camera recording, a person or his or her attorney who  
34 requests a body worn camera recording relevant to a criminal case  
35 involving that person, or the executive director from either the  
36 Washington state commission on African-American affairs, Asian  
37 Pacific American affairs, or Hispanic affairs, has the right to  
38 obtain the body worn camera recording, subject to any exemption under  
39 this chapter or any applicable law. In addition, an attorney who  
40 represents a person regarding a potential or existing civil cause of

1 action involving the denial of civil rights under the federal or  
2 state Constitution, or a violation of a United States department of  
3 justice settlement agreement, has the right to obtain the body worn  
4 camera recording if relevant to the cause of action, subject to any  
5 exemption under this chapter or any applicable law. The attorney must  
6 explain the relevancy of the requested body worn camera recording to  
7 the cause of action and specify that he or she is seeking relief from  
8 redaction costs under this subsection (14)(e).

9 (ii) A law enforcement or corrections agency responding to  
10 requests under this subsection (14)(e) may not require the requesting  
11 individual to pay costs of any redacting, altering, distorting,  
12 pixelating, suppressing, or otherwise obscuring any portion of a body  
13 worn camera recording.

14 (iii) A law enforcement or corrections agency may require any  
15 person requesting a body worn camera recording pursuant to this  
16 subsection (14)(e) to identify himself or herself to ensure he or she  
17 is a person entitled to obtain the body worn camera recording under  
18 this subsection (14)(e).

19 (f)(i) A law enforcement or corrections agency responding to a  
20 request to disclose body worn camera recordings may require any  
21 requester not listed in (e) of this subsection to pay the reasonable  
22 costs of redacting, altering, distorting, pixelating, suppressing, or  
23 otherwise obscuring any portion of the body worn camera recording  
24 prior to disclosure only to the extent necessary to comply with the  
25 exemptions in this chapter or any applicable law.

26 (ii) An agency that charges redaction costs under this subsection  
27 (14)(f) must use redaction technology that provides the least costly  
28 commercially available method of redacting body worn camera  
29 recordings, to the extent possible and reasonable.

30 (iii) In any case where an agency charges a requestor for the  
31 costs of redacting a body worn camera recording under this subsection  
32 (14)(f), the time spent on redaction of the recording shall not count  
33 towards the agency's allocation of, or limitation on, time or costs  
34 spent responding to public records requests under this chapter, as  
35 established pursuant to local ordinance, policy, procedure, or state  
36 law.

37 (g) For purposes of this subsection (14):

38 (i) "Body worn camera recording" means a video and/or sound  
39 recording that is made by a body worn camera attached to the uniform  
40 or eyewear of a law enforcement or corrections officer from a covered

1 jurisdiction while in the course of his or her official duties and  
2 that is made on or after the effective date of this section and prior  
3 to July 1, 2019; and

4 (ii) "Covered jurisdiction" means any jurisdiction that has  
5 deployed body worn cameras as of the effective date of this section,  
6 regardless of whether or not body worn cameras are being deployed in  
7 the jurisdiction on the effective date of this section, including,  
8 but not limited to, jurisdictions that have deployed body worn  
9 cameras on a pilot basis.

10 (h) Nothing in this subsection shall be construed to restrict  
11 access to body worn camera recordings as otherwise permitted by law  
12 for official or recognized civilian and accountability bodies or  
13 pursuant to any court order.

14 (i) Nothing in this section is intended to modify the obligations  
15 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,  
16 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*  
17 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and  
18 the relevant Washington court criminal rules and statutes.

19 **Sec. 3.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285  
20 are each reenacted and amended to read as follows:

21 Public records shall be available for inspection and copying, and  
22 agencies shall, upon request for identifiable public records, make  
23 them promptly available to any person including, if applicable, on a  
24 partial or installment basis as records that are part of a larger set  
25 of requested records are assembled or made ready for inspection or  
26 disclosure. Agencies shall not deny a request for identifiable public  
27 records solely on the basis that the request is overbroad. Agencies  
28 shall not distinguish among persons requesting records, and such  
29 persons shall not be required to provide information as to the  
30 purpose for the request except to establish whether inspection and  
31 copying would violate RCW 42.56.070(9) or 42.56.240(14), or other  
32 statute which exempts or prohibits disclosure of specific information  
33 or records to certain persons. Agency facilities shall be made  
34 available to any person for the copying of public records except when  
35 and to the extent that this would unreasonably disrupt the operations  
36 of the agency. Agencies shall honor requests received by mail for  
37 identifiable public records unless exempted by provisions of this  
38 chapter.

1       **Sec. 4.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to  
2 read as follows:

3       No fee shall be charged for the inspection of public records(~~(-~~  
4 ~~No fee shall be charged for~~) or locating public documents and making  
5 them available for copying, except as provided in RCW 42.56.240(14).

6 A reasonable charge may be imposed for providing copies of public  
7 records and for the use by any person of agency equipment or  
8 equipment of the office of the secretary of the senate or the office  
9 of the chief clerk of the house of representatives to copy public  
10 records, which charges shall not exceed the amount necessary to  
11 reimburse the agency, the office of the secretary of the senate, or  
12 the office of the chief clerk of the house of representatives for its  
13 actual costs directly incident to such copying. Agency charges for  
14 photocopies shall be imposed in accordance with the actual per page  
15 cost or other costs established and published by the agency. In no  
16 event may an agency charge a per page cost greater than the actual  
17 per page cost as established and published by the agency. To the  
18 extent the agency has not determined the actual per page cost for  
19 photocopies of public records, the agency may not charge in excess of  
20 fifteen cents per page. An agency may require a deposit in an amount  
21 not to exceed ten percent of the estimated cost of providing copies  
22 for a request. If an agency makes a request available on a partial or  
23 installment basis, the agency may charge for each part of the request  
24 as it is provided. If an installment of a records request is not  
25 claimed or reviewed, the agency is not obligated to fulfill the  
26 balance of the request.

27       NEW SECTION.       **Sec. 5.** (1) A law enforcement or corrections  
28 agency that deploys body worn cameras must establish policies  
29 regarding the use of the cameras. The policies must, at a minimum,  
30 address:

31       (a) When a body worn camera must be activated and deactivated,  
32 and when a law enforcement or corrections officer has the discretion  
33 to activate and deactivate the body worn camera. The policies must  
34 require that an officer deactivate a body worn camera when entering a  
35 residence unless at the time of entry into the residence a crime is  
36 occurring at the residence or the officer reasonably believes a crime  
37 may occur at the residence while the officer is entering or within  
38 the residence;

1 (b) How a law enforcement or corrections officer is to respond to  
2 circumstances when it would be reasonably anticipated that a person  
3 may be unwilling or less willing to communicate with an officer who  
4 is recording the communication with a body worn camera;

5 (c) How a law enforcement or corrections officer will document  
6 when and why a body worn camera was deactivated prior to the  
7 conclusion of an interaction with a member of the public while  
8 conducting official law enforcement or corrections business;

9 (d) How, and under what circumstances, a law enforcement or  
10 corrections officer is to inform a member of the public that he or  
11 she is being recorded, including in situations where the person is a  
12 non-English speaker or has limited English proficiency, or where the  
13 person is deaf or hard of hearing;

14 (e) How officers are to be trained on body worn camera usage and  
15 how frequently the training is to be reviewed or renewed; and

16 (f) Security rules to protect data collected and stored from body  
17 worn cameras.

18 (2) A law enforcement or corrections agency that deploys body  
19 worn cameras before the effective date of this section must establish  
20 the policies within one hundred twenty days of the effective date of  
21 this section. A law enforcement or corrections agency that deploys  
22 body worn cameras on or after the effective date of this section must  
23 establish the policies before deploying body worn cameras.

24 (3) This section expires July 1, 2019.

25 NEW SECTION. **Sec. 6.** (1) The legislature shall convene a task  
26 force with the following voting members to examine the use of body  
27 worn cameras by law enforcement and corrections agencies:

28 (a) One member from each of the two largest caucuses of the  
29 senate, appointed by the president of the senate;

30 (b) One member from each of the two largest caucuses in the house  
31 of representatives, appointed by the speaker of the house of  
32 representatives;

33 (c) A representative from the governor's office;

34 (d) Two representatives from the Washington association of  
35 prosecuting attorneys;

36 (e) A representative from the Washington defender association;

37 (f) A representative of the Washington association of criminal  
38 defense lawyers;



1 (g) A representative from the American civil liberties union of  
2 Washington;

3 (h) A representative from the Washington association of sheriffs  
4 and police chiefs;

5 (i) Four chief local law enforcement officers, at least two of  
6 whom must be from local law enforcement agencies that have deployed  
7 body worn cameras, appointed jointly by the president of the senate  
8 and the speaker of the house of representatives;

9 (j) Three law enforcement officers, one representing the council  
10 of metropolitan police and sheriffs and two representing the  
11 Washington council of police and sheriffs;

12 (k) Two representatives of local governments responsible for  
13 oversight of law enforcement, appointed jointly by the president of  
14 the senate and the speaker of the house of representatives;

15 (l) A representative from the Washington coalition for open  
16 government;

17 (m) A representative of the news media, appointed jointly by the  
18 president of the senate and the speaker of the house of  
19 representatives;

20 (n) A representative of victims advocacy groups, appointed  
21 jointly by the president of the senate and the speaker of the house  
22 of representatives;

23 (o) Two representatives with experience in interactions between  
24 law enforcement and the public, appointed by the Washington state  
25 commission on African-American affairs;

26 (p) Two representatives with experience in interactions between  
27 law enforcement and the public, appointed by the Washington state  
28 commission on Asian Pacific American affairs;

29 (q) Two representatives with experience in interactions between  
30 law enforcement and the public, appointed by the Washington state  
31 commission on Hispanic affairs;

32 (r) One representative of immigrant or refugee communities,  
33 appointed jointly by the president of the senate and the speaker of  
34 the house of representatives;

35 (s) One person with expertise in the technology of retaining and  
36 redacting body worn camera recordings, appointed jointly by the  
37 president of the senate and the speaker of the house of  
38 representatives;

39 (t) Two representatives of the tribal communities with experience  
40 in interactions between law enforcement and the public, appointed

1 jointly by the president of the senate and the speaker of the house  
2 of representatives; and

3 (u) A public member, appointed jointly by the president of the  
4 senate and the speaker of the house of representatives.

5 (2) The task force shall choose two cochairs from among its  
6 legislative members.

7 (3) The task force may request such information, recordings, and  
8 other records from agencies as the task force deems appropriate for  
9 it to effectuate this section. A participating agency must provide  
10 such information, recordings, or records upon request subject to  
11 exemptions under chapter 42.56 RCW or any applicable law.

12 (4) Staff support for the task force shall be provided by the  
13 senate committee services and the house of representatives office of  
14 program research.

15 (5) Legislative members of the task force may be reimbursed for  
16 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
17 members, except those representing an employer, governmental entity,  
18 or other organization, are entitled to be reimbursed for travel  
19 expenses as provided in RCW 43.03.050 and 43.03.060.

20 (6) The expenses of the task force shall be paid jointly by the  
21 senate and the house of representatives. Task force expenditures are  
22 subject to approval by the senate facilities and operations committee  
23 and the house executive rules committee, or their successor  
24 committees.

25 (7) The task force shall hold public meetings in locations that  
26 include rural and urban communities and communities in the eastern  
27 and western parts of the state.

28 (8) The task force shall specifically consider and report on the  
29 use of body worn cameras in health care facilities subject to the  
30 health insurance portability and accountability act of 1996, P.L.  
31 104-191, and the uniform health care information act, chapter 70.02  
32 RCW. The task force shall consult with subject matter experts,  
33 including, but not limited to, the Washington state hospital  
34 association and the Washington state medical association, and any  
35 findings or recommendations must be consistent with the obligations  
36 of health care facilities under both federal and state law.

37 (9) The task force shall report its findings and recommendations  
38 to the governor and the appropriate committees of the legislature by  
39 December 1, 2018. The report must include, but is not limited to,  
40 findings and recommendations regarding costs assessed to requesters,

1 policies adopted by agencies, retention and retrieval of data, model  
2 policies regarding body worn cameras that at a minimum address the  
3 issues identified in section 5 of this act, and the use of body worn  
4 cameras for gathering evidence, surveillance, and police  
5 accountability. The task force must allow a minority report to be  
6 included with the task force report if requested by a member of the  
7 task force.

8 (10) This section expires June 1, 2019.

9 NEW SECTION. **Sec. 7.** Section 5 of this act constitutes a new  
10 chapter in Title 10 RCW.

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